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**REVOCATION OF POWER OF  
ATTORNEY WITH  
NEW POWER OF ATTORNEY  
AND  
CHANGE OF CORRESPONDENCE  
ADDRESS**

Application Number	09/516,078
Filing Date	March 1, 2000
First Named Inventor	Hertelendy, Zsolt Istvan
Art Unit	1645
Examiner Name	Portner, Virginia Allen
Attorney Docket Number	287.1003

I hereby revoke all previous powers of attorney or authorizations of agent given in the above-identified application:

A Power of Attorney is submitted herewith.

**OR**

I hereby appoint the practitioners at Customer Number : 23280

Please change the correspondence address for the above-identified application to:

The address associated with  
Customer Number:

23280

**OR**

Firm or  
Individual Name Davidson, Davidson & Kappel, LLC

Address 485 Seventh Avenue  
14<sup>th</sup> Floor

City New York State NY ZIP 10018

Country United States of America

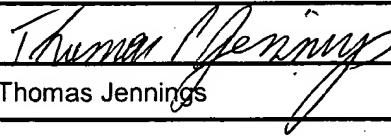
Telephone 212-736-1940 Fax 212-736-2427

I am the:

Applicant/Inventor.

Assignee of record of the entire interest. See 37 CFR 3.71.  
*Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)*

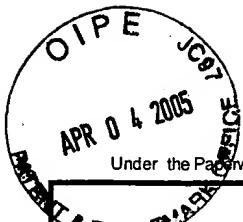
**SIGNATURE of Applicant or Assignee of Record**

Signature			
Name	Thomas Jennings		
Date	2-2-05	Telephone	859-342-2092

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.  
Submit multiple forms if more than one signature is required, see below\*.

\*Total of \_\_\_\_\_ forms are submitted.

This collection of information is required by 37 CFR 1.36. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

**STATEMENT UNDER 37 CFR 3.73(b)**

Applicant/Patent Owner: HERTELENDY, Zsolt Istvan, et al.

Application No./Patent No.: 09/516,078 Filed/Issue Date: March 1, 2000

Entitled: Urogenital or Anorectal Transmucosal Vaccine Delivery System

Ruti Acquisition, Inc. a Corporation

(Name of Assignee)

(Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

1.  the assignee of the entire right, title, and interest; or
2.  an assignee of less than the entire right, title, and interest

The extent (by percentage) of its ownership interest is \_\_\_\_ %  
in the patent application/patent identified above by virtue of either:

A.  An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel \_\_\_\_, Frame \_\_\_\_, or for which a copy thereof is attached.

**OR**

B.  A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as shown below:

1. From: Hertelendy, et al. To: Protein Express, Inc.

The document was recorded in the United States Patent and Trademark Office at  
Reel 010601, Frame 0271, or for which a copy thereof is attached.

2. From: Protein Express, Inc. To: PX Pharmaceuticals, Inc.

The document was recorded in the United States Patent and Trademark Office at  
Reel \_\_\_\_, Frame \_\_\_\_, or for which a copy thereof is attached.

3. From: PX Pharmaceuticals, Inc. To: Ruti Acquisition, Inc.

The document was recorded in the United States Patent and Trademark Office at  
Reel \_\_\_\_, Frame \_\_\_\_, or for which a copy thereof is attached.

Additional documents in the chain of title are listed on a supplemental sheet.

Copies of assignments or other documents in the chain of title are attached.

[NOTE: A separate copy (i.e., a true copy of the original document(s)) must be submitted to Assignment Division in accordance with 37 CFR Part 3, if the assignment is to be recorded in the records of the USPTO. See MPEP 302.08]

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

Signature

Thomas Jennings

Printed or Typed Name

Secretary

Title

2- 3-05

Date

859-342-2092

Telephone Number

This collection of information is required by 37 CFR 3.73(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



MAY 08 2000

PTAS

BENESCH, FRIEDLANDER, COPLAN ET AL.  
TERESAN W. GILBERT *RHE*  
200 PUBLIC SQUARE  
2300 BP TOWER  
CLEVELAND, OH 44114

UNITED STATES DEPARTMENT OF COMMERCE

Patent and Trademark Office

ASSISTANT SECRETARY AND COMMISSIONER  
OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231



\*101288562A\*

UNITED STATES PATENT AND TRADEMARK OFFICE  
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 03/01/2000

REEL/FRAME: 010601/0271  
NUMBER OF PAGES: 5

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:

HERTELENDY, ZSOLT I.

DOC DATE: 02/10/2000

ASSIGNOR:

WEINER, MURRAY

DOC DATE: 01/25/2000

ASSIGNOR:

HOWELL, MICHAEL

DOC DATE: 02/10/2000

ASSIGNOR:

THOMAS, JOSEPH

DOC DATE: 02/10/2000

ASSIGNEE:

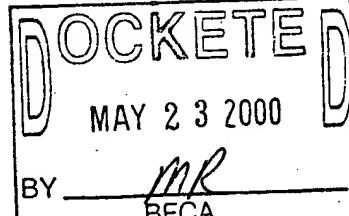
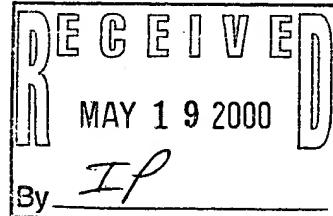
PROTEIN EXPRESS  
3130 HIGHLAND AVENUE  
THIRD FLOOR  
CINCINNATI, OHIO 45219-2374

SERIAL NUMBER: 09516078

FILING DATE: 03/01/2000

PATENT NUMBER:

ISSUE DATE:



45061-8

SEDLEY PYNE, PARALEGAL  
ASSIGNMENT DIVISION  
OFFICE OF PUBLIC RECORDS

03-15-2000

P08/REV01  
Tab settings → → →



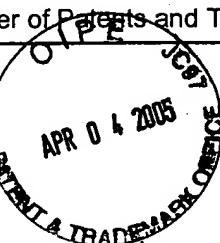
101288562

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Zsolt I. Hertelendy  
Murray Weiner  
Michael Howell  
Joseph Thomas

Additional names(s) of conveying party(ies)



Yes  No

3. Nature of conveyance:

Assignment  Merger  
 Security Agreement  Change of Name  
 Other \_\_\_\_\_

Execution Date: \_\_\_\_\_

4. Application number(s) or registration numbers(s):

If this document is being filed together with a new application, the execution date of the application is: \_\_\_\_\_

A. Patent Application No.(s)

New Application

03/10/2000 SDAVIS 00000026 09516078

03 FC:581

40.00 OP

Additional numbers

B. Patent No.(s)

09/516078

Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Teresan W. Gilbert

Benesch, Friedlander, Coplan & Aronoff LLP

Street Address: 2300 BP Tower

200 Public Square

City: Cleveland State: OH ZIP: 44114

6. Total number of applications and patents involved:

1

7. Total fee (37 CFR 3.41): \$ 40.00

Enclosed

Authorized to be charged to deposit account

8. Deposit account number:

02-2051

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Teresan W. Gilbert, Reg. No. 31,360

Name of Person Signing

Signature

3/11/00  
Date

ASSIGNMENT

In consideration of the payment by ASSIGNEES to ASSIGNORS of the sum of Ten Dollars (\$10.00), the receipt of which is hereby acknowledged, and for other good and valuable consideration,

ASSIGNORS: Name: Zsolt I. Hertelendy, Ph.D.

Address: 3270 Linwood Ave.  
Cincinnati, Ohio 45226

County:

Name: Murray Weiner, MD

Address: 8915 Spooky Ridge Lane  
Cincinnati, Ohio 45242

County:

Name: Michael Howell, Ph.D.

Address: 6361 Killerney Ct.  
Mason, Ohio 45040

County:

Name: Joseph Thomas

Address: 1654 Grandview Drive  
Hebron, Kentucky 41048

County:

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail in an envelope addressed to the Assistant Commissioner of Patents, Washington, DC 20231, Express Mail Label # *EM01639237245*

Signature *Antoinette P. Woods*

Name: *Antoinette P. Woods*  
3-1-00

hereby sell, assign and transfer to

ASSIGNEES: Name: Protein Express

Principal Place  
Of Business: 3130 Highland Avenue, Third Floor  
Cincinnati, Ohio 45219-2374

State of  
Incorporation:

and the successors, assigns and legal representatives of the ASSIGNEES the entire right, title and interest for the United States and its territorial possessions, and in all foreign countries, including all rights to claim priority in and to any and all improvements which are disclosed in the invention entitled:

**UROGENITAL OR ANORECTAL TRANSMUCOSAL VACCINE DELIVERY SYSTEM**

and which is found in (37 C.F.R. § 3.21)

X U.S. patent application executed on the

To comply with 37 C.F.R. § 3.21 for recording of this assignment, we, as ASSIGNORS signing below, hereby authorize and request our attorney to insert below the filing date and application number when they become known:

Application Number: Filing Date:

and any legal equivalent thereof in a foreign country, including the right to claim priority and, in and to, all Letters Patent to be obtained for such invention by the above application or any continuation, division, renewal, or substitute thereof, and as to letters patent, any reissue or re-examination thereof.

ASSIGNORS hereby covenant that no assignment, sale, agreement or encumbrance has been or will be made or entered into which would conflict with this assignment.

ASSIGNORS further covenant that ASSIGNEES will, upon their request, be provided promptly with all pertinent facts and documents relating to said invention and said Letters Patent and legal equivalents as may be known and accessible to ASSIGNORS and will testify as to the same in any interference, litigation or proceeding related thereto and will promptly execute and deliver to ASSIGNEES or their legal representatives any and all papers, instruments or affidavits

required to apply for, obtain, maintain, issue and enforce said application, said invention and said Letters Patent and said equivalents thereof which may be necessary or desirable to carry out the purposes thereof.

Signed at Cincinnati, Ohio on this  
(City) (State)

10<sup>th</sup> day of February, 2000.

(Month)

Zsolt Hertelendy  
Zsolt Hertelendy

STATE OF OHIO )  
COUNTY OF Hamilton ) :SS

Personally appeared before me this day, the above named Zsolt I. Hertelendy, to me personally known, who acknowledged that he signed the foregoing instrument for the uses and purposes therein mentioned, and that the same is his free act and deed.

In testimony whereof, I have hereunto set my hand and affixed my seal, this 10<sup>th</sup> day of  
2000.



F. X. Shadley  
FREDERIC X. SHADLEY ESQ. Attorney at Law  
Notary Public - State of Ohio  
My Commission Has No Expiration Date  
Section 147.03

(Seal)

Signed at BOCA GRANDE, Florida on this  
(City) (State)

25 day of JANUARY, 2000.

(Month)

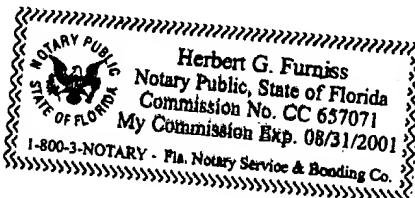
Murray Weiner  
Murray Weiner, MD

STATE OF FLORIDA )  
COUNTY OF LEE ) :SS

Personally appeared before me this day, the above named Murray Weiner, to me personally known, who acknowledged that he signed the foregoing instrument for the uses and purposes therein mentioned, and that the same is his free act and deed.

In testimony whereof, I have hereunto set my hand and affixed my seal, this 25 day of  
JANUARY, 2000.

(Seal)



Notary Public

Herbert G. Furniss

Signed at Cincinnati, Ohio on this  
(City) (State)

10<sup>th</sup> day of February, 2000.  
(Month)

Michael Howell

Michael Howell

STATE OF OHIO )  
COUNTY OF Hamilton ) :SS

Personally appeared before me this day, the above named Michael Howell, to me personally known, who acknowledged that he signed the foregoing instrument for the uses and purposes therein mentioned, and that the same is his free act and deed.

In testimony whereof, I have hereunto set my hand and affixed my seal, this 10<sup>th</sup> day of February, 2000.

(Seal)



F.X. Shadley  
FREDERIC X. SHADLEY ESQ. Attorney at Law  
Notary Public - State of Ohio  
My Commission Has No Expiration Date  
Section 147.03

Signed at Cincinnati, Ohio on this  
(City) (State)

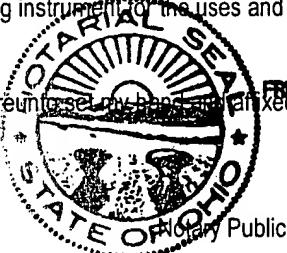
10<sup>th</sup> day of February, 2000.  
(Month)

Joseph Thomas

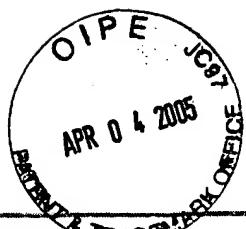
STATE OF OHIO )  
COUNTY OF Hamilton ) :SS

Personally appeared before me this day, the above named Joseph Thomas, to me personally known, who acknowledged that he signed the foregoing instrument for the uses and purposes therein mentioned, and that the same is his free act and deed.

In testimony whereof, I have hereunto set my hand and affixed my seal, this 10<sup>th</sup> day of February, 2000.



F.X. Shadley  
FREDERIC X. SHADLEY ESQ. Attorney at Law  
Notary Public - State of Ohio  
My Commission Has No Expiration Date  
Section 147.03



PTO-1595  
1/31/92

RECORDATION FORM COVER SHEET

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

**PATENTS ONLY**

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies): Protein Express, Inc.

2. Name and address of receiving party(ies):

PX Pharmaceuticals, Inc.

Internal Address: \_\_\_\_\_

Additional name(s) of conveying parties attached?  Yes  No

3. Nature of Conveyance:

Assignment  Merger  
 Security Agreement  Change of Name  
 Other: \_\_\_\_\_

Execution Date: December 3, 2004

Street Address: 9940 Reading Road

City: Cincinnati State: Ohio Zip: 45241

Additional name(s) and address(es) attached?  Yes  No

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is:

A. Patent Application No.(s) 09/516,078

B. Patent No.(s) 6,099,853

Additional numbers attached?  Yes  No

5. Names and address of party to whom correspondence concerning document should be mailed:

6. Total number of applications and patents involved: [1]

Name: Geoffrey L. Oberhaus

7. Total Fee (27 CFR 3.41) ... \$ 40.00

Internal Address: Dinsmore & Shohl LLP

Enclosed  
 Please charge the amount of \$40.00 to our Visa credit card account. Form PTO-2038 is attached  
 Please charge any deficiencies or credit any overpayment to deposit account  
 Authorization to be charged to deposit account

Street Address: 1900 Chemed Center

255 East Fifth Street

City: Cincinnati State: Ohio Zip: 45202

8. Deposit Account Number:

04-1133

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.*

Geoffrey L. Oberhaus, Reg. No. 42,955

Name of Person Signing, Registration Number

*Geoffrey L. Oberhaus*  
Signature

*12-4-04*  
Date

Total Number of pages including cover sheet

[5]

**CERTIFICATE OF MAILING**

I hereby certify that this paper is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Assignment Recordation Services; Director of the U.S. Patent and Trademark Office; P.O. Box 1450; Arlington, VA 22313-1450 on December 14, 2004.

*Stephanie Berlepsch*  
Stephanie Berlepsch

**INTELLECTUAL PROPERTY**  
**ASSIGNMENT**

THIS ASSIGNMENT (the "Assignment") by and between PROTEIN EXPRESS, INC., an Ohio corporation ("Assignor"), and PX PHARMACEUTICALS, INC., an Ohio corporation, ("Assignee") is entered into on this 3rd day of December 2004 (the "Effective Date").

WHEREAS, Assignee is a party to a certain Agreement of Merger and Plan of Reorganization (the "Merger Agreement") by and among Assignee, Assignor, XANODYNE PHARMACEUTICALS, INC., a Delaware Corporation ("Xanodyne"), RUTI ACQUISITION, a Delaware corporation wholly owned by Xanodyne ("RUTI") and certain others; and

WHEREAS, Assignor is the owner of all rights, title and interest in and to the inventions, and the corresponding issued United States Patents or pending United States Patent Applications listed in Exhibit A attached hereto; and

WHEREAS, the assignment of said United States Patents and said United States Patent Applications by Assignor to Assignee is a condition precedent to the Merger of Assignee with and into Ruti as contemplated by the Merger Agreement; and

WHEREAS, Assignee is desirous of acquiring the entire, right, title and interest in and to said United States Patents and said United States Patent Applications.

NOW, THEREFORE, for the good and valuable consideration of the \$250,000 Promissory Note attached as Exhibit B, the receipt of which is hereby acknowledged, the Assignor agrees as follows:

1. Patents Rights. Effective immediately, Assignor does hereby sell, assign, and transfer and set over, unto said Assignee, its successors, legal representatives and assigns, the entire right, title and interest in, to and under said inventions, and said United States Patents and said United States Patent Applications and all divisions, renewals, and continuations thereof, and all Patents of the United States which may be granted thereon and all reissues, reexaminations and extensions thereof; and all applications for industrial property protection, including, without limitation, all applications for patents, utility models, and designs which may hereafter be filed for said invention in any country or countries foreign to the United States, together with the right to file such applications and the right to claim for the same the priority rights derived from said United States Patents and said United States Patent Applications under the Patent Laws of the United States, the International Convention for the Protection of Industrial Property, or any other international agreement or the domestic laws of the country in which any such application is filed, as may be applicable; and all forms of industrial property protection, including, without limitation, patents, utility models and designs which may be granted for said invention in any country or countries foreign to the United States and all extensions, renewals, reexaminations and reissues thereof.

2. Further Acts. Assignor agrees to execute all papers and to perform such other proper acts as Assignee may reasonably deem necessary to secure to Assignee or to its designee the patent rights herein assigned.

3. Representations and Warranties by Assignor. Assignor hereby represents and warrants that: (i) Assignor is the owner of all right, title and interest in and to said United States Patents and said United States Patent Applications; (ii) no proceedings have been instituted or are pending or, to the knowledge of Assignor threatened, which challenge any rights with respect to the validity of any of said United States Patents and said United States Patent Applications; (iii) none of said United States Patents and said United States Patent Applications infringe or otherwise violate the rights of others, are being infringed upon by others, or are subject to any outstanding order, decree, judgment, stipulation or charge; (iv) no licenses, sublicenses or agreements granting rights in any of said United States Patents and said United States Patent Applications have been granted or entered into by Assignor; and (v) Assignor has not received any written notice of interference or infringement regarding any of said United States Patents and said United States Patent Applications.

4. Prior License Agreement. The License Agreement, related to U.S. patent application entitled Vaginal Suppository Vaccine for Urogenital Infections, between Assignor and Assignee executed January 15, 1998 is hereby void *ab initio*.

5. Miscellaneous.

a. Headings. The headings in this Assignment are for convenience of reference only and shall not limit or otherwise affect any of the terms or provisions hereof.

b. Governing Law and Jurisdiction. This Assignment and the rights and obligations of the parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of Kentucky, without regard to Kentucky's conflict of laws principles. Assignor and Assignee agree that any legal action involving this Assignment shall be undertaken in the state and federal courts sitting in Boone County, Kentucky, and Assignor and Assignee hereby consent to the jurisdiction and authority of such courts.

c. Assignability. This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors, and assigns.

d. Capitalized Terms. Capitalized terms not otherwise defined herein shall have the same meaning as in the Merger Agreement.

e. Entire Agreement. This Assignment and the Merger Agreement constitute the entire agreement of the parties and supersede all other understandings or agreements, written or oral, if any with respect to this subject matter. To the extent that anything in this Assignment conflicts with the Merger Agreement, the Merger Agreement shall control. This Assignment can only be modified or amended in writing executed by Assignor and Assignee or as Assignee's successor, Ruti and Xanodyne.

f. Execution of Assignment. This Assignment may be executed in two or more counterparts, each which shall be deemed an original but all of which shall together constitute one and the same instrument. Facsimile signatures may be relied upon and shall be deemed originals for purposes of effecting the provisions of this Assignment.

IN WITNESS WHEREOF, the undersigned have executed this Assignment as of the date first written above.

ASSIGNOR:

PROTEIN EXPRESS, INC.

By *Michael Howell*  
Print Name: *Michael Howell*  
Title: *President*

ASSIGNEE:

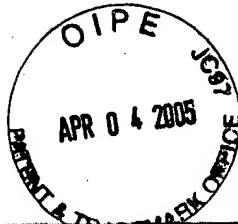
PX PHARMACEUTICALS, INC.

By *Michael Howell*  
Print Name: *Michael Howell*  
Title: *President*

**EXHIBIT A**

U.S. Patent No. 6,099,853 issued August 8, 2000

U.S. Patent Application Serial No. 09/516,078 filed March 1, 2000.



PTO-1595  
1/31/92

RECORDATION FORM COVER SHEET

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

**PATENTS ONLY**

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies): PX Pharmaceuticals, Inc.

2. Name and address of receiving party(ies):  
Ruti Acquisition, Inc.

Additional name(s) of conveying parties attached?  Yes  No

Internal Address: \_\_\_\_\_

3. Nature of Conveyance:

Assignment  Merger  
 Security Agreement  Change of Name  
 Other: \_\_\_\_\_

Street Address: 7300 Turfway Road  
Suite 300

Execution Date: December 3, 2004

City: Florence State: Kentucky Zip: 41042

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is:

A. Patent Application No.(s) 09/516,078

B. Patent No.(s) 6,099,853

Additional numbers attached?  Yes  No

5. Names and address of party to whom correspondence concerning document should be mailed:

6. Total number of applications and patents involved: [1]

Name: Geoffrey L. Oberhaus

7. Total Fee (27 CFR 3.41), \$ 40.00

Internal Address: Dinsmore & Shohl LLP

Enclosed  
 Please charge the amount of \$40.00 to our Visa credit card account. Form PTO-2038 is attached  
 Please charge any deficiencies or credit any overpayment to deposit account  
 Authorization to be charged to deposit account

Street Address: 1900 Chemed Center  
255 East Fifth Street

8. Deposit Account Number:

04-1133

(Attach duplicate copy of this page if paying by deposit account)

City: Cincinnati State: Ohio Zip: 45202

DO NOT USE THIS SPACE

9. Statement and signature.

*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.*

Geoffrey L. Oberhaus, Reg. No. 42,955

Name of Person Signing, Registration Number

Geoffrey L. Oberhaus

Signature

12-14-04

Date

Total Number of pages including cover sheet

[3]

**CERTIFICATE OF MAILING**

I hereby certify that this paper is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Assignment Recordation Services; Director of the U.S. Patent and Trademark Office; P.O. Box 1450; Arlington, VA 22313-1450 on December 14, 2004.

Stephanie Berlepsch  
Stephanie Berlepsch

# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"PX PHARMACEUTICALS, INC.", A OHIO CORPORATION, WITH AND INTO "RUTI ACQUISITION, INC." UNDER THE NAME OF "RUTI ACQUISITION, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE THIRD DAY OF DECEMBER, A.D. 2004, AT 10:50 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

3866868 8100M

040870200



*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State  
AUTHENTICATION: 3517629

DATE: 12-03-04

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 11:09 AM 12/03/2004  
FILED 10:50 AM 12/03/2004  
SRV 040870200 - 3866868 FILE

STATE OF DELAWARE  
CERTIFICATE OF MERGER OF  
FOREIGN CORPORATION INTO  
A DOMESTIC CORPORATION

Pursuant to Title 8, Section 252 of the Delaware General Corporation Law, the undersigned corporation executed the following Certificate of Merger:

**FIRST:** The name of the surviving corporation is RUTI ACQUISITION, INC.

, a Delaware corporation, and the name  
of the corporation being merged into this surviving corporation is  
FX PHARMACEUTICALS, INC. A. N. OHIO  
corporation.

**SECOND:** The Agreement of Merger has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations pursuant to Title 8 Section 252 of the General Corporation Law of the State of Delaware.

**THIRD:** The name of the surviving corporation is RUTI ACQUISITION, INC.

, a Delaware corporation.

**FOURTH:** The Certificate of Incorporation of the surviving corporation shall be its Certificate of Incorporation. (If amendments are affected please set forth)

**FIFTH:** The authorized stock and par value of the non-Delaware corporation is 850 Shares of No Par Value Stock

SIXTH: The merger is to become effective on December 3, 2004.

SEVENTH: The Agreement of Merger is on file at  
7300 Turfway Road, Suite 300, Florence, Kentucky 41042, an office of  
the surviving corporation.

**EIGHTH:** A copy of the Agreement of Merger will be furnished by the surviving corporation on request, without cost, to any stockholder of the constituent corporations.

IN WITNESS WHEREOF, said surviving corporation has caused this certificate to be signed by an authorized officer, the 3rd day of December, 2004, A.D.

By: Donald J. Lee  
Authorized Officer

Name: Thomas P. Jennings

Print or Type

Title: Secretary